

## Memorandum

Date: October 5, 2004

To: Mr. Ramon J. Hirsig (MIC:73)  
Executive Director

From: Kristine Cazadd  
Assistant Chief Counsel  
Property Taxes Division

Subject: Rule 27, *Valuation of Possessory Interests for the Production of Hydrocarbons*  
Chief Counsel's Rulemaking Calendar -  
November 4, 2004

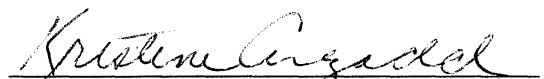
This is to request your approval to place the proposed amendments to Property Tax Rule 27, *Valuation of Possessory Interests for the Production of Hydrocarbons* on the Chief Counsel's Rulemaking Calendar for the Board's consideration at its November 4, 2004 meeting.


The reasons for the revisions are to delete references to possessory interest Rules 25 and 26, which were repealed effective July 11, 2002, to add as a reference Rule 21 (amended and effective on July 11, 2002) and the oil and gas Rule 468 (adopted on July 3, 1978), and to make other minor grammatical corrections.

Attached are the proposed amendments to the regulation, which reflect the above changes. The request for the Board's authorization to amend this regulation is in accordance with Title 1, California Code of Regulations, section 100. We have determined that these changes are without regulatory effect and are therefore not subject to the normal public hearing process. If you have any questions regarding this request, please contact me or Tax Counsel Shirley Johnson at (916) 324-2056.

Recommendation by:

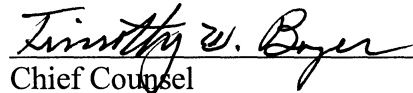
Approved:

  
Kristine Cazadd, Assistant Chief Counsel

  
Ramon J. Hirsig, Executive Director

Approved:

BOARD APPROVED

  
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Chief Counsel  
Legal Department

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Deborah Pellegrini, Chief  
Board Proceedings Division

KEC:jlh  
Attachment  
Rules/27/04/ApprovalMemo.doc

Cc: (all with attachments)  
Deborah Pellegrini, Chief  
Board Proceedings Division

Mr. David Gau (MIC:64)  
Mr. Dean Kinnee (MIC:64)  
Ms. Shirley Johnson (MIC:82)  
Ms. Sherrie Kinkle (MIC:64)

BOARD OF EQUALIZATION  
REGULATORY ACTION IN ACCORDANCE  
WITH OAL SECTION 100 (CHANGE WITHOUT REGULATORY EFFECT)

RULE/REG: Property Tax Rule 27

REASON FOR CHANGE (check those applicable)

- ☐ renumbering, reordering, or relocating regulatory provision
- ☐ deleting regulatory provision for which all statutory or constitutional authority has been repealed
- ☐ deleting regulatory provision held invalid in a judgment that has become final, entered by a California court of competent jurisdiction, a US District Court located in the State of California, the US Court of Appeals for the Ninth Circuit, or the US Supreme Court
- ☒ revising structure, syntax, cross-reference, grammar, or punctuation
- ☒ changing an "authority" or "reference" citation
- ☐ making consistent with changed California statute if (A) provision is inconsistent with and superseded by changed statute; and (B) Board has no discretion to adopt a change which differs in substance from this proposal

**Therefore, I recommend that these amendments be submitted to OAL as a change without regulatory effect and without public hearing.**

Prepared by Shirley Johnson

Date September 17, 2004

Approvals

Division Chief *Don R. Kuper* Date *10/7/04*

Deputy Director *David J. Gao* Date *10/7/04*

Assistant Chief Counsel *Kristen Leggett* Date *10-6-04*

Chief Counsel *Timothy Byer* Date *10-6-04*

Chief, Board Proceedings \_\_\_\_\_ Date \_\_\_\_\_

**INSTRUCTIONS:**

After approval, forward to next on list. In the event of disapproval, return to preparer.

## Section 100. Publication of “Changes Without Regulatory Effect.”

(a) Subject to the approval of OAL as provided in subsections (c) and (d), an agency may add to, revise or delete text published in the California Code of Regulations without complying with the rulemaking procedure specified in Article 5 of the APA only if the change does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision. The addition, revision or deletion is a “change without regulatory effect.” Changes without regulatory effect include, but are not limited to:”

- (1) renumbering, reordering, or relocating a regulatory provision;
- (2) deleting a regulatory provision for which all statutory or constitutional authority has been repealed;
- (3) deleting a regulatory provision held invalid in a judgment that has become final, entered by a California court of competent jurisdiction, a United States District Court located in the State of California, the United States Court of Appeals for the Ninth Circuit, or the United States Supreme Court; however, OAL shall not approve any proposed change without regulatory effect if the change is based on a superior court decision which invalidated the regulatory provision solely on the grounds that the underlying statute was unconstitutional;
- (4) revising structure, syntax, cross-reference, grammar, or punctuation;
- (5) changing an “authority” or “reference” citation for a regulation; and,
- (6) making a regulatory provision consistent with a changed California statute if both the following conditions are met:
  - (A) the regulatory provision is inconsistent with an superseded by the changed statute, and
  - (B) the adopting agency has no discretion to adopt a change which differs in substance from the one chosen.

(b) In submitting a change without regulatory effect to OAL for review the agency shall:

- (1) submit seven copies of the regulation with an addition shown in underline or italics and a deletion shown in strike-out; and
- (2) attach to each copy a completed Form 400, with at least one Form 400 bearing an original signature; and
- (3) submit a written statement explaining why the change does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision.

(c) OAL shall determine whether a change submitted is a change without regulatory effect within 30 working days of its receipt. OAL shall send written notification of the determination to the agency which submitted the changes.

(d) If OAL determines that the submitted change is a change without regulatory effect, OAL shall file it with the Secretary of State and have it published in the California Code of Regulations.

LA:eb

Prop/Rules/302/Section100

**REGULATORY ACTION PURSUANT TO  
TITLE 1, SECTION 100 CALIFORNIA CODE OF REGULATIONS**

**PROPOSED MODIFICATION TO  
PROPERTY TAX RULE 27, VALUATION OF POSSESSORY  
INTERESTS FOR PRODUCTION OF HYDROCARBONS  
STATEMENT OF EXPLANATION**

**Specific Purpose**

The specific purpose of the proposed modifications to the rule is as follows:

- (a) to delete the references to Property Tax Rules 25 and 26, which were repealed effective July 11, 2002.
- (b) to add as references, Rule 21 recently amended and effective July 11, 2002, and Rule 468, adopted on July 3, 1978.
- (c) to add Revenue and Taxation Code 107 to the reference citation.
- (d) to make minor grammatical corrections.

**Factual Basis**

Rule 27 sets forth the valuation methods for determining the taxable value of all possessory interests for the production of gas, petroleum, and other hydrocarbon substances from beneath the surface of the earth.

The amendments to subsection (a) delete the reference to Rule 25 that provides that the valuation of possessory interests for the production of hydrocarbon substances is “determined by application of the comparative sales or income approach prescribed in section 25”. Rule 25 was repealed effective July 11, 2002. Rule 468, which provides for the valuation of oil and gas producing properties is added as a reference. Rule 21 is also added as a reference as it was amended to provide for the valuation of taxable possessory interests and to include provisions of the former Rule 25. An “s” is added to the word “interest” to agree with the modifying adjective “all.” The word “section” is deleted and replaced with the word “regulation” at the end of the subsection for consistency.

The amendments to subsection (b) delete Rule 26 as a reference for the application of the comparative sales or income approach because Rule 26 was repealed effective July 11, 2002. Rule 468, which provides for the valuation of oil and gas producing properties is added as a reference. Rule 21 is also added as a reference as it was amended effective July 11, 2002, to provide for the valuation of taxable possessory interests and to include provisions of the former Rule 26. Adding a colon at the end of the subsection after the word “if” is necessary for the purpose of introducing a formal statement or extract.

The amendment to the “reference” citation to add section 107, is necessary because section 107 provides the meaning of possessory interests.

The amendment to subsection (b)(1) adds a semicolon at the end of the sentence between the word “interest” and “or” for the purpose of separating independent clauses.

Rule/27/04 Explanation

## BOARD OF EQUALIZATION

### PROPERTY TAX RULES

*Chapter 1. State Board of Equalization – Property Tax*

*Subchapter 1. Valuation Principles and Procedures*

#### **Rule 27      VALUATION OF POSSESSORY INTERESTS FOR THE PRODUCTION OF HYDROCARBONS.**

*Authority:* Section 15606, Government Code.

*Reference:* Sections 107, 107.2 and 107.3, Revenue and Taxation Code.

(a) The taxable value of all possessory interests for the production of gas, petroleum, and other hydrocarbon substances from beneath the surface of the earth shall be determined by application of the comparative sales or income approach in the manner prescribed in Regulation 468 and in subsections (a)-(e)(1) or (b)-(e)(3) of section 25-Regulation 21, except as provided in subsection (b) of this ~~section~~ regulation.

(b) The taxable value of a possessory interest for the production of hydrocarbon substances from beneath the surface of the earth shall be determined by application of the comparative sales or income approach in the manner prescribed in Regulation 468 and in subsections (a)-(f)(1) or (b)-(f)(3) of section 26-Regulation 21 if:

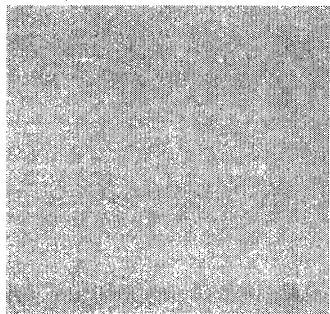
(1) the interest was created or last extended or renewed on or before July 26, 1963, and the rate of royalties or other right to share in production was not reduced because of an increase in the assessed value of such interest; or

(2) the interest was created on or before July 26, 1963, and has been extended or renewed thereafter pursuant to authority which prohibits reduction of the rate of royalty or other right to share in production because of an increase in the assessed value of such interest.

*History:*    *Adopted January 6, 1971, effective February 18, 1971.*

*Amended XX, 2004, effective XX, 2004*

**§27. Valuation of Possessory Interests for the Production of Hydrocarbons.**



/cgi-bin/om\_isapi.dll?clientID=115486&advquery=%5bGroup%20title%2018%5d%5bGroup%2027%5d&hitsperheading=on&infobase=ccr&record=dochitfirst&recordswithhits=on&softpage=Document42/cgi-bin/om\_isapi.dll?clientID=115486&advquery=%5bGroup%20title%2018%5d%5bGroup%2027%5d&hitsperheading=on&infobase=ccr&record=dochitfirst&recordswithhits=on&softpage=Document42 • Note • History

(a) The taxable value of all possessory interest for the production of gas, petroleum, and other hydrocarbon substances from beneath the surface of the earth shall be determined by application of the comparative sales or income approach in the manner prescribed in subsection (a) or (b) of section 25 except as provided in subsection (b) of this section.

(b) The taxable value of a possessory interest for the production of hydrocarbon substances from beneath the surface of the earth shall be determined by application of the comparative sales or income approach in the manner prescribed in subsection (a) or (b) of section 26 if

(1) the interest was created or last extended or renewed on or before July 26, 1963, and the rate of royalties or other right to share in production was not reduced because of an increase in the assessed value of such interest or

(2) the interest was created on or before July 26, 1963, and has been extended or renewed thereafter pursuant to authority which prohibits reduction of the rate of royalty or other right to share in production because of an increase in the assessed value of such interest.

#### NOTE

Authority cited: Section 15606, Government Code. Reference: Sections 107.2 and 107.3, Revenue and Taxation Code.

#### HISTORY

1. New section filed 1-19-71; effective thirtieth day thereafter (Register 71, No. 4).
2. Editorial correction deleting footnote filed 7-30-82 (Register 82, No. 31).